IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL ST.NO.22997 OF 2005

Ramchandra Hari Godhade (Jadhav) ...Appellant

vs.

Yashoda Jyoti Godhade ...Respondent

Mr.C.N.Chavan for the Appellant
Mr.Dilip Bodake for the Respondent

CORAM: A.S.OKA,J.
DATE : NOVEMBER 21,2007.

P.C.:

1. I have the learned Advocate for the Appellant. The Appellant is the original defendant who has suffered the concurrent decree of partition and separate possession.

2. The submission of the learned Advocate for the Appellant is that deceased Hari left behind him a daughter by name Bhagirathi. He submitted that the Appellant was not given an opportunity to lead evidence regarding date of death of deceased Hari. He submitted that there was a prior partition in which the house property was allotted to the share of the Respondent and therefore, there was no occasion to pass a decree for partition. He also submitted that the Appellant has mortgaged one of the suit properties prior to the date of filing the written statement.

3. I have considered the submissions. The plea that deceased

Hari was having a daughter is admittedly not taken in the written statement filed by the Appellant. Hence, there was no occasion for the trial court to permit the Appellant to lead evidence on this aspect. As far as prior partition is concerned, concurrent finding is that there is no evidence to indicate that there was a prior partition. Even as regards mortgage, the finding of the courts below is that there was absolutely no evidence as regards mortgage. In view of the concurrent findings of fact,there is no merit in the Second Appeal and the same is dismissed with no order as to costs.

JUDGE